

February 8, 2007

Dean Kinnee, Chief
County-Assessed Properties Division
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0064

RE: Property Tax Rule 462.040 – Joint Tenancy

The California Assessors' Association (CAA) has been approached by staff at the state to review the rule, and to see whether we are interested in revising the rule. We are, and we advocate five changes to the current rule.

In 2003, certain changes to the rule were made that had a variety of consequences that were unforeseen and unintended by the parties who advanced those changes. The essential purpose of the amendments in 2003 was to allow registered domestic partners an avenue for transferring property without the burden of a reassessment. Effectively, in 2006 that was accomplished with the passage of SB 565. However, the changes to the Property Tax Rule have opened the door to some very serious and unforeseen dilemmas.

In any discussion of the property tax rule on joint tenancy, it is important to understand the original intent of the "original transferor" exclusion. The Legal Division at the State Board of Equalization wrote a letter in 1987 to an individual who was questioning the way the exclusion was being interpreted. It stated in part:

"In order to understand what the Legislature had in mind in enacting the joint tenancy provisions relating to change in ownership it is helpful to refer to two reports which were prepared for the Legislature's benefit. The first is the Report of the Task Force on Property Tax Administration dated January 22, 1979 which was presented to the Assembly Committee on Revenue and Taxation. ... The second report is entitled Implementation of Proposition 13, Volume 1, Property Taxes Assessment dated October 29, 1979 and was prepared by the staff of the Assembly Revenue and Taxation Committee."

The letter went on to quote from the first report:

“3. Tenancies-in-Common and Joint Tenancies.

...

“Under the Tax Force recommendations separate accounting is not required for ‘family’ joint tenancies, which are the great majority of joint tenancies in this state. Thus the new burden on assessors is limited only to co-tenancies which don’t fit under the ‘family’ joint tenancy rule and are not interspousal co-tenancies. That group of co-tenancies should not be numerous.

“4. ‘Family’ Joint Tenancies. Probably the vast majority of joint tenancies in California (other than interspousal joint tenancies) are those in which a parent places his property in joint tenancy with children. The special aspect of a joint tenancy (as distinguished from tenancy-in-common) is that the surviving joint tenant (or joint tenants) succeeds to the entire property by operation of law on the death of the other joint tenant. For that reason joint tenancy is often used as a substitute for a will. The same consideration which justifies excluding the making of a will from change in ownership also supports exclusion of the creation of a joint tenancy where the transferor (e.g., a parent) is one of the joint tenants. The rights of the new joint tenants (e.g., the children) to obtain the entire property outright are contingent upon their surviving the transferor joint tenant. Creation of such joint tenancies is not a change in ownership, but the entire property is reappraised when the joint tenancy terminates.”

The report recognized that some of the joint tenancies that might fall under the general rule would not be ‘family’ joint tenancies. However, the *reason* they wanted to create the rule was because they believed that a vast majority of joint tenancies were ‘family’ joint tenancies. Because people were often using joint tenancy for estate planning, they wanted to find a reason to exclude these transfers. The exclusion was justified by saying “*joint tenancy is often used as a substitute for a will. The same consideration which justifies excluding the making of a will from change in ownership also supports exclusion of the creation of a joint tenancy where the transferor (e.g., a parent) is one of the joint tenants. The rights of the new joint tenants (e.g., the children) to obtain the entire property outright are contingent upon their surviving the transferor joint tenant.*”

Back in 1978 to 1980, when this exclusion was formulated, joint tenancy was an established method of estate planning for many people. However, since that time, estate planning has changed a great deal. Trusts and family limited partnerships have become more common than joint tenancy as estate planning tools. In fact, joint tenancy is frequently identified as an estate plan to be *avoided*. The type of estate planning commonly used in 1980 (joint tenancy) is incompatible with the type of estate planning commonly used today (trusts). As responsible guardians of the public good, we should not encourage people to take irresponsible risks with their property titles by trying to mix the two types.

[NOTE: The CAA believes, in fact, there is no longer any need for the original transferor exclusion. The Legislature was trying to cushion any assessment impact for family transfers. Other exclusions are now in place to protect family transfers, however. There is a parent/child exclusion, a grandparent/grandchild exclusion, and most recently, a domestic partner exclusion. Of course, elimination of the original transferor exclusion would require legislation, and is not the focus of this request. Nevertheless, this is the ultimate goal of the CAA.]

In discussing the five changes to Property Tax Rule 462.040 that we would like to see, we have kept the Legislative intent in approving the original rule in mind.

1. Our first and most immediate problem is that of trusts in joint tenancies. We understand the intent behind the rule change was to allow registered domestic partners to take advantage of the exclusion, and that it was merely attempting to broaden the original intent of a 'family' joint tenancy.

Unfortunately, the addition of trusts to joint tenancy has created even more chaos than the rule with its concept of 'original transferors' did originally. There may be some circumstances where judges have ruled that a trust may be a joint tenant. However, unless a court rules in an individual case that a trust is a joint tenant, a trust (a legal entity that cannot die) should not be allowed as a joint tenant. The real and potential problems that can occur with trusts as joint tenants were both unanticipated and unintended by the Board.

Attached, as Exhibit A, is a chart outlining some of the problems being experienced by the counties, and examples of exclusion usage that were unintended by the drafters.

Attached, as Exhibit 1, is a proposed revision to the Property Tax Rule to implement the removal of trusts.

[Note: Each suggestion below is followed by another Exhibit with proposed wording revisions to the rule, and each suggestion has changes to the wording of the rule in different colors. Each Exhibit builds on the suggestions that have preceded it. Changes to each exhibit are as follows: Exhibit 1 – blue. Exhibit 2 – green. Exhibit 3 – dark red. Exhibit 4 – purple. Exhibit 5 – pink.]

2. Our second concern is the interpretation that allows a change in vesting to create original transferors. Until 2003, the interpretation of the code was that a change in vesting only (A and B as tenants in common to A and B as joint tenants) was a change in vesting only. No original transferors would be created. This is consistent with the Legislative intent as indicated in the two reports. If parents were on title and added a child or children as joint tenants, or if two individuals were on title and they added the spouse of one of the individuals, then original transferors would be created. A change in the vesting only that triggers this exclusion was never intended, nor even contemplated, originally.

Attached, as Exhibit B, is a chart outlining some of the problems being experienced by the counties, and examples of exclusion usage that were unintended by the drafters. Please note especially Example 1 in the chart, and the applicant's position which the Appeals Board found "compelling." The applicant argued that there is "...no support or citation..." to the position that the legislative intent of Property Tax Rule 462.040 is for estate planning purposes, and is not designed to be used as a tool to circumvent a reassessment. Naturally, an applicant will use any argument, erroneous or not, to win his case. But when the Appeals Board of a major county can find nothing in the rule to contradict such an inaccurate and specious representation of the rule's intent, it is time to consider clarifying the wording and examples.

Attached, as Exhibit 2, is a proposed revision to the Property Tax Rule to implement the revision to the interpretation as outlined above.

3. Third on our list of concerns and our suggestion for aligning the rule with the original Legislative intent is that of overlapping original transferors. Under current interpretation, suppose that Beth owns a piece of property. Beth grants to herself and her niece Heather as joint tenants. Beth becomes an original transferor. Now, if Beth and Heather grant to Beth, Heather, and Heather's husband George, all three of them become original transferors (Beth and Heather because they are both the transferors and transferees in the joint tenancy, and George because he is the spouse of an original transferor). If Beth dies, or later grants to Heather and George, or either of them individually, there is no reassessment, because the interest is going to an original transferor. It is not difficult to see how now Heather and George can go on to create another joint tenancy, while the property escapes reassessment for years.

In the second report referenced above (Implementation of Proposition 13, Volume 1, Property Taxes Assessment dated October 29, 1979), it states in part:

"Operation of Present Law. In determining whether a joint tenancy transaction constitutes a change in ownership, and if so the extent to which the property would be reappraised, AB 1488 introduced and AB 1019 refined the concept of an 'original transferor'.

"An 'original transferor' is one or more persons who hold joint tenancy interests in property immediately after a complete turnover of the previous original owners occurs. For joint tenancies created prior to March 1, 1975, it is rebuttably presumed that all owners as of that date are original transferors. The spouse of an original transferor is also considered to be an original transferor, even if he/she was added as an owner after the original acquisition. **After the point in time at which the original ownership is established, no subsequent joint tenants who are added to the current ownership (except the spouses just mentioned) are treated as 'original transferors'** (Section 65(a)). (Emphasis added.)

The report goes on to give examples:

“Examples. This rather complex treatment is designed to protect family joint tenancy interest, and those of original owners. The following examples show the operation of these provisions:

“(4) Two friends, X and Y, purchase a small business as joint tenants in 1978. In 1980 they become co-original transferors by adding Y’s spouse and associates R and S as co-joint tenants. Result: no reappraisal.

“Barring any other intervivos transfer of interest, no reappraisal will occur until the survivor of X, Y, and Y’s spouse dies, at which time there would be a 100% reappraisal.

“However, if X transfers intervivos to any party (current joint tenant or new person, a 50% reappraisal will occur (X held one-half of original interest). Likewise with Y unless Y transfers to Y’s spouse, in which case the interspousal exemption applies. If Y’s spouse transfers to anyone other than Y, a 20% reappraisal would occur (assumes one-fifth equal shares prior to transfer).

“If R or S were to transfer to the other alone, or to a new party T, then a similar 20% reappraisal would occur, due to the one-fifth interest of each. But if they transfer only to X, Y or Y’s spouse, or to all remaining joint tenants, no reappraisal occurs.

“It should be noted that the original transferor is not allowed the option of transferring intervivos to either the other original transferors (if any) or to all remaining joint tenants –as non-original transferors are allowed to do—without incurring reappraisal; escape from reappraisal is allowed to an original transferor only upon the transfer of his/her interest at death, i.e., ‘by operation of law’.

Very clearly, the Legislative intent was not to avoid reassessment entirely, particularly by any intervivos steps. It allowed the exclusion when the transfer was ‘by operation of law,’ or in other words, at the death of any joint tenant, but only until all of the original owner transferors were gone. If wording to this intent had been included, or if the example had been added to the rule, step-transactions in joint tenancies would have been virtually impossible. What we would like is to add some of those safeguards into the rule.

Attached, as Exhibit 3, is a proposed revision to the Property Tax Rule to implement the revision to the interpretation as outlined above.

4. Fourth on the list is to address owners with unequal interests becoming original transferors without a reassessment. You will see examples in the Exhibit B regarding tenants in common with unequal interests becoming original transferors. Prior to the change in 2003, the State had previously revised its

interpretation of the rule to allow for this when additional joint tenants were added. For example, Mark owns a 5% interest and Donna owns a 95% interest in property as tenants in common. Mark and Donna grant to themselves and Jane, Mark's wife, all as joint tenants. Now, the State's opinion is that Mark, Jane, and Donna are all original transferors, and there is no reassessment. If Donna, who originally owned 95% of the property, deeds to Mark and Jane, or to either of them individually, there would be no reassessment, since both Mark and Jane are original transferors.

By reviewing Example 4 from the second report, as quoted above, the Legislative intent was not to allow original owners to transfer *intervivos* percentages of interest without a reassessment. Rather, it was to allow either single or equal joint original owners to use an estate planning tool that was in vogue at the time the exclusion was passed. We would now like to close this loophole, and return the exclusion to a much closer interpretation of what the Legislature intended.

Attached, as Exhibit 4, is a proposed revision to the Property Tax Rule to implement the revision to the interpretation as outlined above.

5. Finally, we would like to reverse a 1999 amendment to the rule. We do not believe this change follows the requirements of the statute under Revenue and Taxation Code section 65(b).

The amendment was stated as follows: "If a spouse of an original transferor acquires an interest in the joint tenancy property either during the period that the original transferor holds an interest *or by means of a transfer from the original transferor*, such spouse shall also be considered to be an original transferor." (Emphasis added.) In addition, Example 7-2 was added to the rule.

Revenue and Taxation Code section 65(b) states:

There shall be no change in ownership upon the creation or transfer of a joint tenancy interest *if the transferor or transferors, after such creation or transfer, are among the joint tenants*. Upon the creation of a joint tenancy interest described in this subdivision, the transferor or transferors shall be the "original transferor or transferors" for purposes of determining the property to be reappraised on subsequent transfers. The spouses or original transferors shall also be considered original transferors within the meaning of this section. (Emphasis added.)

The code requires that the transferor be among the joint tenants "after such creation or transfer." The rule allows for an exception not stated in the code – that the transferor *not* be among the joint tenants, but that a spouse who was not on title can be given the interest by an original transferor who is coming off title.

Attached, as Exhibit 5, is a proposed revision to the Property Tax Rule to implement the revision to the interpretation as outlined above.

In summary, the California Assessor's Association (CAA) would like to eliminate the original transferor exclusion entirely. Since this will involve legislation, it will be an item on the CAA's Legislative Committee's upcoming agenda. Any legislation takes time, however, and there are items of concern in the existing rule. In order of priority, the most urgent and immediate changes needed are:

- First, remove of any mention of trusts within a joint tenancy.
- Second, return the requirement for an additional person to be added before the exclusion can be triggered.
- Third, close the loophole allowing additional original transferors to be created (other than a spouse) until all of the primary original transferors are gone.
- Fourth, equalize by reassessment when grantors with unequal interests become original transferors.
- Fifth, require a grantor original transferor to remain on title as a grantee in order for a spouse also to acquire original transferor status.

Thank you for your assistance in this endeavor.

Sincerely,



Tom J. Bordonaro, Jr.
County of San Luis Obispo Assessor

Attachments

c: Michael Strong, CAA President

TJB(vs):BLE:jw

EXHIBIT 1

s 462.040. Change in Ownership -Joint Tenancies.

(a) General Rule. The creation, transfer, or termination of a joint tenancy interest is a change in ownership of the interest transferred.

Example 1: The purchase of property by A and B, as joint tenants, is a change in ownership of the entire property.

Example 2: The transfer from A and B, as joint tenants, to C and D, as joint tenants, is a change in ownership of the entire property.

Example 3: The subsequent transfer from C and D, as joint tenants, to C, as sole owner, is a change in ownership of 50% of the property.

(b) Exceptions. The following transfers do not constitute a change in ownership:

(1) The transfer creates or transfers any joint tenancy interest, ~~including an interest in a trust~~, and after such creation or transfer, the transferor(s) is one of the joint tenants. Such a transferor(s) is also a transferee(s) and is, therefore, considered to be an "original transferor(s)" for purposes of determining the property to be reappraised upon subsequent transfers. If a spouse of an original transferor acquires an interest in the joint tenancy property either during the period that the original transferor holds an interest or by means of a transfer from the original transferor, such spouse shall also be considered to be an original transferor. ~~Any joint tenant may also become an original transferor by transferring his or her joint tenancy interest to the other joint tenant(s) through his or her trust if the trust instrument names the other joint tenant(s) as the present beneficiary or beneficiaries.~~ All other initial and subsequent joint tenants are considered to be "other than original transferors."

Example 4: A and B own property as tenants in common and transfer the property to A and B as joint tenants. A and B are both "original transferors."

~~Example 4(a): A and B purchase property as joint tenants. Later A and B transfer their property interests to each other as joint tenants through their respective trusts. A and B are transferors who are among the joint tenants and are, therefore, considered to be "original transferors."~~

Example 4(a): A and B purchase property as joint tenants. A transfers his interest to his trust. No change in ownership, since A's trust is revocable, and for his benefit. However, A's trust and B are now tenants in common unless there is a court order specifying that A's trust is a joint tenant with B.

Example 4(b): A and B as tenants in common transfer to A as trustee of A's revocable trust and B as joint tenants. No change in ownership, since each continues to own a 50% interest. However, A's trust and B continue as tenants in common unless there is a court

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order specifying that A's trust is a joint tenant with B. In this case, both A's trust and B become original transferors.

Example 4(c): A and B purchase property as tenants in common, with A owning 25% and B owning 75%. A and B transfer to A as trustee of A's trust and B as joint tenants. There is a 25% change in ownership, and A's trust and B remain tenants in common unless there is a court order specifying that A's trust is a joint tenant with B. If there is a court order specifying that A's trust is a joint tenant with B, both A's trust and B become original transferors, and there is no change in ownership.

Example 5: A and B, as joint tenants, transfer to A, B, C, and D as joint tenants. No change in ownership because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." (C and D are "other than original transferors.") Likewise, if A, as the sole owner, had transferred to A, B, C, and D as joint tenants, no change in ownership. A would be an "original transferor" and B, C, and D would be "other than original transferors".

Example 6: A and B, as joint tenants, transfer to A, B, C, D and E as joint tenants. E is B's wife. No change in ownership because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." E is also an "original transferor." (C and D are "other than original transferors.")

Example 7-1: A, B, and C are joint tenants and A is ~~an~~ the "original transferor". A dies. B and C transfer to B, C, and D as joint tenants. D is A's husband. D does not become an original transferor because he did not acquire his interest during the period that A held an interest in the joint tenancy.

Example 7-2: A and B, as joint tenants, transfer to B and C, as joint tenants, and C is A's spouse. C is an original transferor because he was the spouse of an original transferor and he acquired an interest by means of a transfer from A.

Example 7-3: A and B are joint tenants and A is an "original transferor". C is A's spouse. A and B as joint tenants transfer to A, B, and C. C is an original transferor

Example 8: A and B, as joint tenants, transfer to B, C and D, as joint tenants. 66 2/3% change in ownership of the transferred interests because A is not one of the transferees.

Example 9: ~~A and B purchase property as joint tenants and transfer their joint tenancy interests to each other through their respective trusts. A and B become "original transferors". A and B sell a 50% interest to C and D, with the deed showing A, B, C and D as joint tenants. C and D then transfer their joint tenancy interests to each other through their trusts, so that both become "original transferors". A and B then sell their remaining 50% to C and D, and go off title. A, B, C, and D transfer to A, B, C, D, and E as joint tenants. A, B, and E then transfer to C and D.~~ Under circumstances where application of the step-transaction doctrine to disregard the form of the transaction would be appropriate due to their intent to avoid a change in ownership, A, B, C and D do not become "original

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transferors" as the result of their transfers ~~to each other~~.

(2) The transfer terminates an original transferor's interest in a joint tenancy described in (b)(1) and the interest vests in whole or in part in the remaining original transferors; except that, upon the termination of the interest of the last surviving original transferor, there shall be a reappraisal of the property as if it had undergone a 100 percent change in ownership.

Example 10: A and B transfer to A, B, C, and D as joint tenants. A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an original transferor, remains as a joint tenant.

Example 11: Following the example set forth in Example 10 (above), B dies or grants his interest to C and D. 100 percent change in ownership because both A's and B's interests had previously been excluded from reappraisal and B was the last surviving original transferor.

(3) The transfer terminates a joint tenancy interest held by other than an original transferor in a joint tenancy described in (b)(1) and the interest is transferred either to an original transferor, or to all the remaining joint tenants, provided that one of the remaining joint tenants is an original transferor. The original transferor status of any remaining joint tenants ceases when a joint tenancy is terminated.

Example 12: Following the example set forth in Example 10 (above), C, not an original transferor, grants his interest to B and D. No change in ownership because C grants to the remaining joint tenants, B and D, and B is an original transferor.

Example 13: A owns real property and transfers a 50% interest to B as a tenant in common resulting in a change in ownership of that 50% interest. They subsequently transfer to themselves in joint tenancy and, as a result, become "original transferors". A dies and A's joint tenancy interest passes to B by operation of law without a change in ownership because B is an "original transferor." Upon A's death, the joint tenancy is terminated and B ceases to be an "original transferor."

(4) For other than joint tenancies described in (b)(1), the transfer is between or among co-owners and results in a change in the method of holding title but does not result in a change in the proportional interests of the co-owners, such as:

(A) a transfer terminating the joint tenancy and creating separate ownerships of the property in equal interests.

(B) a transfer terminating the joint tenancy and creating a tenancy in common of equal interests.

(C) a transfer terminating a joint tenancy and creating or transferring to a legal entity when the interests of the transferors and transferees remain the same after the transfer.

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(Such transferees shall be considered to be the "original co-owners" for purposes of determining whether a change in ownership occurs upon the subsequent transfer of the ownership interests in the property.)

(5) The transfer is one to which the interspousal exclusion applies.

(6) The transfer is of a joint tenancy interest of less than five percent of the value of the total property and has a value of less than \$10,000; provided, however, that transfers of such interests during any one assessment year (the period from January 1 through December 31) shall be accumulated for the purpose of determining the percentage interest and value transferred. When the value of the accumulated interests transferred during any assessment year equals or exceeds five percent of the value of the total property or \$10,000, then only that percentage of the property represented by the transferred accumulated interests shall be reappraised. For purposes of this subsection, the "accumulated interests transferred" shall not include any transfer of an interest that is otherwise excluded from change in ownership.

(7) The transfer is one to which the parent-child or grandparent-grandchild exclusion applies, and for which a timely claim has been filed as required by law.

(c) For purposes of this section, for joint tenancies created on or before March 1, 1975, it shall be rebuttably presumed that each joint tenant holding an interest in property as of March 1, 1975, is an "original transferor." This presumption is not applicable to joint tenancies created after March 1, 1975.

(d) For purposes of this section, the assessor may consider persons holding joint title to property, such as tenants in common, to be joint tenants ~~and "original transferors"~~ if there is "reasonable cause" to believe that the parties intended to create a joint tenancy ~~and each person was a transferor among the persons holding title.~~ "Reasonable cause" means a deed, Affidavit of Death of Joint Tenant, ~~a trust,~~ will, or estate plan ~~indicating that a joint tenant was a transferor among the joint tenants,~~ unless circumstances causing the application of the step transaction exist.

Example 14: A and B jointly purchase their primary residence and title is recorded as tenants in common. The sales contract states that A and B intended to take title as joint tenants. ~~Subsequently, A and B each execute revocable living trusts transferring their respective interests in the property to their trusts for the benefit of each other.~~ The assessor may determine that the sales contract ~~and trust instruments~~ **establishes** that A and B intended to hold title as joint tenants upon purchase ~~and that each subsequently became an "original transferor."~~

EXHIBIT 2

s 462.040. Change in Ownership -Joint Tenancies.

(a) General Rule. The creation, transfer, or termination of a joint tenancy interest is a change in ownership of the interest transferred.

Example 1: The purchase of property by A and B, as joint tenants, is a change in ownership of the entire property.

Example 2: The transfer from A and B, as joint tenants, to C and D, as joint tenants, is a change in ownership of the entire property.

Example 3: The subsequent transfer from C and D, as joint tenants, to C, as sole owner, is a change in ownership of 50% of the property.

(b) Exceptions. The following transfers do not constitute a change in ownership:

(1) The transfer creates or transfers any joint tenancy interest, ~~including an interest in a trust~~, and after such creation or transfer, the transferor(s) is one of the joint tenants. Such a transferor(s) is also a transferee(s) and is, therefore, considered to be an "original transferor(s)" for purposes of determining the property to be reappraised upon subsequent transfers. If a spouse of an original transferor acquires an interest in the joint tenancy property either during the period that the original transferor holds an interest or by means of a transfer from the original transferor, such spouse shall also be considered to be an original transferor. ~~Any joint tenant may also become an original transferor by transferring his or her joint tenancy interest to the other joint tenant(s) through his or her trust if the trust instrument names the other joint tenant(s) as the present beneficiary or beneficiaries.~~ All other initial and subsequent joint tenants are considered to be "other than original transferors."

Example 4: A and B own property as tenants in common and transfer the property to A and B as joint tenants. A and B are ~~both~~ not "original transferors." **To become original transferors, the transfer must be from A and B to A and B and at least one other person.**

~~Example 4(a): A and B purchase property as joint tenants. Later A and B transfer their property interests to each other as joint tenants through their respective trusts. A and B are transferors who are among the joint tenants and are, therefore, considered to be "original transferors."~~

Example 4(a): A and B purchase property as joint tenants. A transfers his interest to his trust. No change in ownership, since A's trust is revocable, and for his benefit. However, A's trust and B are now tenants in common unless there is a court order specifying otherwise.

Example 5: A and B, as joint tenants, transfer to A, B, C, and D as joint tenants. No change in ownership because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." (C and D are "other than original transferors.")

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Likewise, if A, as the sole owner, had transferred to A, B, C, and D as joint tenants, no change in ownership. A would be an "original transferor" and B, C, and D would be "other than original transferors".

Example 6: A and B, as joint tenants, transfer to A, B, C, D and E as joint tenants. E is B's wife. No change in ownership because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." E is also an "original transferor." (C and D are "other than original transferors.")

Example 7-1: A, B, and C are joint tenants and A is ~~an~~ **the** "original transferor". A dies. B and C transfer to B, C, and D as joint tenants. D is A's husband. D does not become an original transferor because he did not acquire his interest during the period that A held an interest in the joint tenancy.

Example 7-2: A and B, as joint tenants, transfer to B and C, as joint tenants, and C is A's spouse. C is an original transferor because he was the spouse of an original transferor and he acquired an interest by means of a transfer from A.

Example 7-3: A and B are joint tenants and A is an "original transferor". C is A's spouse. A and B as joint tenants transfer to A, B, and C. C is an original transferor

Example 8: A and B, as joint tenants, transfer to B, C and D, as joint tenants. 66 2/3% change in ownership of the transferred interests because A is not one of the transferees.

Example 9: ~~A and B purchase property as joint tenants and transfer their joint tenancy interests to each other through their respective trusts. A and B become "original transferors". A and B sell a 50% interest to C and D, with the deed showing A, B, C and D as joint tenants. C and D then transfer their joint tenancy interests to each other through their trusts, so that both become "original transferors". A and B then sell their remaining 50% to C and D, and go off title. A, B, C, and D transfer to A, B, C, D, and E as joint tenants. A, B, and E then transfer to C and D.~~ Under circumstances where application of the step-transaction doctrine to disregard the form of the transaction would be appropriate due to their intent to avoid a change in ownership, A, B, C and D do not become "original transferors" as the result of their transfers ~~to each other~~.

(2) The transfer terminates an original transferor's interest in a joint tenancy described in (b)(1) and the interest vests in whole or in part in the remaining original transferors; except that, upon the termination of the interest of the last surviving original transferor, there shall be a reappraisal of the property as if it had undergone a 100 percent change in ownership.

Example 10: A and B transfer to A, B, C, and D as joint tenants. A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an original transferor, remains as a joint tenant.

Example 11: Following the example set forth in Example 10 (above), B dies or grants his

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interest to C and D. 100 percent change in ownership because both A's and B's interests had previously been excluded from reappraisal and B was the last surviving original transferor.

(3) The transfer terminates a joint tenancy interest held by other than an original transferor in a joint tenancy described in (b)(1) and the interest is transferred either to an original transferor, or to all the remaining joint tenants, provided that one of the remaining joint tenants is an original transferor. The original transferor status of any remaining joint tenants ceases when a joint tenancy is terminated.

Example 12: Following the example set forth in Example 10 (above), C, not an original transferor, grants his interest to B and D. No change in ownership because C grants to the remaining joint tenants, B and D, and B is an original transferor.

~~Example 13: A owns real property and transfers a 50% interest to B as a tenant in common resulting in a change in ownership of that 50% interest. They subsequently transfer to themselves in joint tenancy and, as a result, become "original transferors". A dies and A's joint tenancy interest passes to B by operation of law without a change in ownership because B is an "original transferor." Upon A's death, the joint tenancy is terminated and B ceases to be an "original transferor."~~

Example 13: Following the example set forth in Example 10 (above), C, not an original transferor, grants his interest to D. 33.333% change in ownership because the interest does not transfer to an original transferor. D now holds 33.333% as a tenant in common, and 33.333% in a joint tenancy with B. B remains an original transferor in the joint tenancy.

(4) For other than joint tenancies described in (b)(1), the transfer is between or among co-owners and results in a change in the method of holding title but does not result in a change in the proportional interests of the co-owners, such as:

(A) a transfer terminating the joint tenancy and creating separate ownerships of the property in equal interests.

(B) a transfer terminating the joint tenancy and creating a tenancy in common of equal interests.

(C) a transfer terminating a joint tenancy and creating or transferring to a legal entity when the interests of the transferors and transferees remain the same after the transfer. (Such transferees shall be considered to be the "original co-owners" for purposes of determining whether a change in ownership occurs upon the subsequent transfer of the ownership interests in the property.)

(5) The transfer is one to which the interspousal exclusion applies.

(6) The transfer is of a joint tenancy interest of less than five percent of the value of the

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total property and has a value of less than \$10,000; provided, however, that transfers of such interests during any one assessment year (the period from January 1 through December 31) shall be accumulated for the purpose of determining the percentage interest and value transferred. When the value of the accumulated interests transferred during any assessment year equals or exceeds five percent of the value of the total property or \$10,000, then only that percentage of the property represented by the transferred accumulated interests shall be reappraised. For purposes of this subsection, the "accumulated interests transferred" shall not include any transfer of an interest that is otherwise excluded from change in ownership.

(7) The transfer is one to which the parent-child or grandparent-grandchild exclusion applies, and for which a timely claim has been filed as required by law.

(c) For purposes of this section, for joint tenancies created on or before March 1, 1975, it shall be rebuttably presumed that each joint tenant holding an interest in property as of March 1, 1975, is an "original transferor." This presumption is not applicable to joint tenancies created after March 1, 1975.

(d) For purposes of this section, the assessor may consider persons holding joint title to property, such as tenants in common, to be joint tenants ~~and "original transferors"~~ if there is "reasonable cause" to believe that the parties intended to create a joint tenancy ~~and each person was a transferor among the persons holding title.~~ "Reasonable cause" means a deed, Affidavit of Death of Joint Tenant, ~~a trust,~~ will, or estate plan ~~indicating that a joint tenant was a transferor among the joint tenants,~~ unless circumstances causing the application of the step transaction exist.

Example 14: A and B jointly purchase their primary residence and title is recorded as tenants in common. The sales contract states that A and B intended to take title as joint tenants. ~~Subsequently, A and B each execute revocable living trusts transferring their respective interests in the property to their trusts for the benefit of each other.~~ The assessor may determine that the sales contract ~~and trust instruments~~ establishes that A and B intended to hold title as joint tenants upon purchase ~~and that each subsequently became an "original transferor."~~

EXHIBIT 3

s 462.040. Change in Ownership -Joint Tenancies.

(a) General Rule. The creation, transfer, or termination of a joint tenancy interest is a change in ownership of the interest transferred.

Example 1: The purchase of property by A and B, as joint tenants, is a change in ownership of the entire property.

Example 2: The transfer from A and B, as joint tenants, to C and D, as joint tenants, is a change in ownership of the entire property.

Example 3: The subsequent transfer from C and D, as joint tenants, to C, as sole owner, is a change in ownership of 50% of the property.

(b) Exceptions. The following transfers do not constitute a change in ownership:

(1) The transfer creates or transfers any joint tenancy interest, ~~including an interest in a trust~~, and after such creation or transfer, the transferor(s) is one of the joint tenants. Such a transferor(s) is also a transferee(s) and is, therefore, considered to be an "original transferor(s)" for purposes of determining the property to be reappraised upon subsequent transfers. If a spouse of an original transferor acquires an interest in the joint tenancy property either during the period that the original transferor holds an interest or by means of a transfer from the original transferor, such spouse shall also be considered to be an original transferor. ~~Any joint tenant may also become an original transferor by transferring his or her joint tenancy interest to the other joint tenant(s) through his or her trust if the trust instrument names the other joint tenant(s) as the present beneficiary or beneficiaries.~~ All other initial and subsequent joint tenants are considered to be "other than original transferors."

Example 4: A and B own property as tenants in common and transfer the property to A and B as joint tenants. A and B are ~~both~~ not "original transferors." **To become original transferors, the transfer must be from A and B to A and B and at least one other person.**

~~Example 4(a): A and B purchase property as joint tenants. Later A and B transfer their property interests to each other as joint tenants through their respective trusts. A and B are transferors who are among the joint tenants and are, therefore, considered to be "original transferors."~~

Example 4(a): A and B purchase property as joint tenants. A transfers his interest to his trust. No change in ownership, since A's trust is revocable, and for his benefit. However, A's trust and B are now tenants in common unless there is a court order specifying otherwise.

Example 5: A and B, as joint tenants, transfer to A, B, C, and D as joint tenants. No change in ownership because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." (C and D are "other than original transferors.")

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Likewise, if A, as the sole owner, had transferred to A, B, C, and D as joint tenants, no change in ownership. A would be an "original transferor" and B, C, and D would be "other than original transferors".

Example 5(a): A, as sole owner, transfers to A and B as joint tenants. No change in ownership because A, the transferor, is included among the transferees, and is, therefore, an "original transferor." A and B then transfer to A, B, and C. No change in ownership, but only A is an "original transferor." B and C are "other than original transferors," since B is the initial joint tenant who is an "other than original transferor," and C is the subsequent joint tenant who is an "other than original transferor."

Example 6: A and B, as joint tenants, transfer to A, B, C, D and E as joint tenants. E is B's wife. No change in ownership because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." E is also an "original transferor." (C and D are "other than original transferors.")

Example 7-1: A, B, and C are joint tenants and A is ~~an~~ the "original transferor". A dies, and there is a 100% change in ownership. B and C transfer to B, C, and D as joint tenants. D is A's husband. D does not become an original transferor because he did not acquire his interest during the period that A held an interest in the joint tenancy. However, both B and C become "original transferors," since they are transferors who are among the transferees.

Example 7-2: A and B, as joint tenants, transfer to B and C, as joint tenants, and C is A's spouse. C is an original transferor because he was the spouse of an original transferor and he acquired an interest by means of a transfer from A. B does not become an original transferor.

Example 7-3: A and B are joint tenants and A is an "original transferor". C is A's spouse. A and B as joint tenants transfer to A, B, and C. Both A and C ~~is an~~ are original transferors, and B remains an other than original transferor.

Example 8: A and B, as joint tenants, transfer to B, C and D, as joint tenants. 66 2/3% change in ownership of the transferred interests because A is not one of the transferees.

Example 9: ~~A and B purchase property as joint tenants and transfer their joint tenancy interests to each other through their respective trusts. A and B become "original transferors". A and B sell a 50% interest to C and D, with the deed showing A, B, C and D as joint tenants. C and D then transfer their joint tenancy interests to each other through their trusts, so that both become "original transferors". A and B then sell their remaining 50% to C and D, and go off title. A, B, C, and D transfer to A, B, C, D, and E as joint tenants. A and B remain original transferors, and C, D, and E are other than original transferors. A, B, and E then transfer to C and D. 100% change in ownership, since both original transferors come off title. Under circumstances where application of the step-transaction doctrine to disregard the form of the transaction would be appropriate due to their intent to avoid a change in ownership, A, B, C and D do not become "original~~

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~~transferors" as the result of their transfers to each other.~~

(2) The transfer terminates an original transferor's interest in a joint tenancy described in (b)(1) and the interest vests in whole or in part in the remaining original transferors; except that, upon the termination of the interest of the last surviving original transferor, there shall be a reappraisal of the property as if it had undergone a 100 percent change in ownership.

Example 10: A and B transfer to A, B, C, and D as joint tenants. A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an original transferor, remains as a joint tenant. . However, if A grants his interest to B, or to B, C, and D as joint tenants, under circumstances where application of the step-transaction doctrine to disregard the form of the transaction would be appropriate due to the intent to avoid a change in ownership, there would be a 50% change in ownership (A's original interest was 50%).

Example 11: Following the example set forth in Example 10 (above), B dies or grants his interest to C and D. 100 percent change in ownership because both A's and B's interests had previously been excluded from reappraisal and B was the last surviving original transferor.

(3) The transfer terminates a joint tenancy interest held by other than an original transferor in a joint tenancy described in (b)(1) and the interest is transferred either to an original transferor, or to all the remaining joint tenants, provided that one of the remaining joint tenants is an original transferor. The original transferor status of any remaining joint tenants ceases when a joint tenancy is terminated.

Example 12: Following the example set forth in Example 10 (above), C, not an original transferor, grants his interest to B and D. No change in ownership because C grants to the remaining joint tenants, B and D, and B is an original transferor.

~~Example 13: A owns real property and transfers a 50% interest to B as a tenant in common resulting in a change in ownership of that 50% interest. They subsequently transfer to themselves in joint tenancy and, as a result, become "original transferors". A dies and A's joint tenancy interest passes to B by operation of law without a change in ownership because B is an "original transferor." Upon A's death, the joint tenancy is terminated and B ceases to be an "original transferor."~~

Example 13: Following the example set forth in Example 10 (above), C, not an original transferor, grants his interest to D. 33.333% change in ownership because the interest does not transfer to an original transferor. D now holds 33.333% as a tenant in common, and 33.333% in a joint tenancy with B.

(4) For other than joint tenancies described in (b)(1), the transfer is between or among co-owners and results in a change in the method of holding title but does not result in a change in the proportional interests of the co-owners, such as:

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(A) a transfer terminating the joint tenancy and creating separate ownerships of the property in equal interests.

(B) a transfer terminating the joint tenancy and creating a tenancy in common of equal interests.

(C) a transfer terminating a joint tenancy and creating or transferring to a legal entity when the interests of the transferors and transferees remain the same after the transfer. (Such transferees shall be considered to be the "original co-owners" for purposes of determining whether a change in ownership occurs upon the subsequent transfer of the ownership interests in the property.)

(5) The transfer is one to which the interspousal exclusion applies.

(6) The transfer is of a joint tenancy interest of less than five percent of the value of the total property and has a value of less than \$10,000; provided, however, that transfers of such interests during any one assessment year (the period from January 1 through December 31) shall be accumulated for the purpose of determining the percentage interest and value transferred. When the value of the accumulated interests transferred during any assessment year equals or exceeds five percent of the value of the total property or \$10,000, then only that percentage of the property represented by the transferred accumulated interests shall be reappraised. For purposes of this subsection, the "accumulated interests transferred" shall not include any transfer of an interest that is otherwise excluded from change in ownership.

(7) The transfer is one to which the parent-child or grandparent-grandchild exclusion applies, and for which a timely claim has been filed as required by law.

(c) For purposes of this section, for joint tenancies created on or before March 1, 1975, it shall be rebuttably presumed that each joint tenant holding an interest in property as of March 1, 1975, is an "original transferor." This presumption is not applicable to joint tenancies created after March 1, 1975.

(d) For purposes of this section, the assessor may consider persons holding joint title to property, such as tenants in common, to be joint tenants ~~and "original transferors"~~ if there is "reasonable cause" to believe that the parties intended to create a joint tenancy ~~and each person was a transferor among the persons holding title.~~ "Reasonable cause" means a deed, Affidavit of Death of Joint Tenant, ~~a trust~~, will, or estate plan ~~indicating that a joint tenant was a transferor among the joint tenants,~~ unless circumstances causing the application of the step transaction exist.

Example 14: A and B jointly purchase their primary residence and title is recorded as tenants in common. The sales contract states that A and B intended to take title as joint tenants. ~~Subsequently, A and B each execute revocable living trusts transferring their respective interests in the property to their trusts for the benefit of each other.~~ The

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assessor may determine that the sales contract ~~and trust instruments~~ establishes that A and B intended to hold title as joint tenants upon purchase ~~and that each subsequently became an "original transferor."~~

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s 462.040. Change in Ownership -Joint Tenancies.

(a) General Rule. The creation, transfer, or termination of a joint tenancy interest is a change in ownership of the interest transferred.

Example 1: The purchase of property by A and B, as joint tenants, is a change in ownership of the entire property.

Example 2: The transfer from A and B, as joint tenants, to C and D, as joint tenants, is a change in ownership of the entire property.

Example 3: The subsequent transfer from C and D, as joint tenants, to C, as sole owner, is a change in ownership of 50% of the property.

(b) Exceptions. The following transfers do not constitute a change in ownership:

(1) The transfer creates or transfers any joint tenancy interest, ~~including an interest in a trust~~, and after such creation or transfer, the transferor(s) is one of the joint tenants. Such a transferor(s) is also a transferee(s) and is, therefore, considered to be an "original transferor(s)" for purposes of determining the property to be reappraised upon subsequent transfers. If a spouse of an original transferor acquires an interest in the joint tenancy property either during the period that the original transferor holds an interest or by means of a transfer from the original transferor, such spouse shall also be considered to be an original transferor. ~~Any joint tenant may also become an original transferor by transferring his or her joint tenancy interest to the other joint tenant(s) through his or her trust if the trust instrument names the other joint tenant(s) as the present beneficiary or beneficiaries.~~ All other initial and subsequent joint tenants are considered to be "other than original transferors."

Example 4: A and B own property as tenants in common and transfer the property to A and B as joint tenants. A and B are ~~both~~ not "original transferors." **To become original transferors, the transfer must be from A and B to A and B and at least one other person.**

~~Example 4(a): A and B purchase property as joint tenants. Later A and B transfer their property interests to each other as joint tenants through their respective trusts. A and B are transferors who are among the joint tenants and are, therefore, considered to be "original transferors."~~

Example 4(a): A and B purchase property as joint tenants. A transfers his interest to his trust. No change in ownership, since A's trust is revocable, and for his benefit. However, A's trust and B are now tenants in common unless there is a court order specifying otherwise.

Example 4(b): A and B own property as tenants in common, and A has a 20% interest and B has a 80% interest. A and B transfer to A, B, and C as joint tenants. 30% change in ownership, and both A and B become "original transferors." A and B equally share the

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original transferor status. Therefore, since their interests were unequal before the transfer, there is a change in ownership as to the percentage needed to equalize the interests (for A's original transferor interest to equal B's original transferor interest, there is a 30% change in ownership).

Example 5: A and B, as joint tenants, transfer to A, B, C, and D as joint tenants. No change in ownership because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." (C and D are "other than original transferors.") Likewise, if A, as the sole owner, had transferred to A, B, C, and D as joint tenants, no change in ownership. A would be an "original transferor" and B, C, and D would be "other than original transferors".

Example 5(a): A, as sole owner, transfers to A and B as joint tenants. No change in ownership because A, the transferor, is included among the transferees, and is, therefore, an "original transferor." A and B then transfer to A, B, and C. No change in ownership, but only A is an "original transferor." B and C are "other than original transferors," since B is the initial joint tenant who is an "other than original transferor," and C is the subsequent joint tenant who is an "other than original transferor."

Example 6: A and B, as joint tenants, transfer to A, B, C, D and E as joint tenants. E is B's wife. No change in ownership because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." E is also an "original transferor." (C and D are "other than original transferors.")

Example 7-1: A, B, and C are joint tenants and A is ~~an~~ **the** "original transferor". A dies, **and there is a 100% change in ownership.** B and C transfer to B, C, and D as joint tenants. D is A's husband. D does not become an original transferor because he did not acquire his interest during the period that A held an interest in the joint tenancy. **However, both B and C become "original transferors," since they are transferors who are among the transferees.**

Example 7-2: A and B, as joint tenants, transfer to B and C, as joint tenants, and C is A's spouse. C is an original transferor because he was the spouse of an original transferor and he acquired an interest by means of a transfer from A. **B does not become an original transferor.**

Example 7-3: A and B are joint tenants and A is an "original transferor". C is A's spouse. A and B as joint tenants transfer to A, B, and C. **Both A and C ~~is an~~ are original transferors, and B remains an other than original transferor.**

Example 8: A and B, as joint tenants, transfer to B, C and D, as joint tenants. 66 2/3% change in ownership of the transferred interests because A is not one of the transferees.

Example 9: ~~A and B purchase property as joint tenants and transfer their joint tenancy interests to each other through their respective trusts. A and B become "original transferors".~~ A and B sell a 50% interest to C and D, with the deed showing A, B, C and

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~~D as joint tenants. C and D then transfer their joint tenancy interests to each other through their trusts, so that both become "original transferors". A and B then sell their remaining 50% to C and D, and go off title. A, B, C, and D transfer to A, B, C, D, and E as joint tenants. A and B remain original transferors, and C, D, and E are other than original transferors. A, B, and E then transfer to C and D. 100% change in ownership, since both original transferors come off title. Under circumstances where application of the step-transaction doctrine to disregard the form of the transaction would be appropriate due to their intent to avoid a change in ownership, A, B, C and D do not become "original transferors" as the result of their transfers to each other.~~

(2) The transfer terminates an original transferor's interest in a joint tenancy described in (b)(1) and the interest vests in whole or in part in the remaining original transferors; except that, upon the termination of the interest of the last surviving original transferor, there shall be a reappraisal of the property as if it had undergone a 100 percent change in ownership.

Example 10: A and B transfer to A, B, C, and D as joint tenants. A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an original transferor, remains as a joint tenant. . However, if A grants his interest to B, or to B, C, and D as joint tenants, under circumstances where application of the step-transaction doctrine to disregard the form of the transaction would be appropriate due to the intent to avoid a change in ownership, there would be a 50% change in ownership (A's original interest was 50%).

Example 11: Following the example set forth in Example 10 (above), B dies or grants his interest to C and D. 100 percent change in ownership because both A's and B's interests had previously been excluded from reappraisal and B was the last surviving original transferor.

(3) The transfer terminates a joint tenancy interest held by other than an original transferor in a joint tenancy described in (b)(1) and the interest is transferred either to an original transferor, or to all the remaining joint tenants, provided that one of the remaining joint tenants is an original transferor. The original transferor status of any remaining joint tenants ceases when a joint tenancy is terminated.

Example 12: Following the example set forth in Example 10 (above), C, not an original transferor, grants his interest to B and D. No change in ownership because C grants to the remaining joint tenants, B and D, and B is an original transferor.

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Example 13: Following the example set forth in Example 10 (above), C, not an original transferor, grants his interest to D. 33.333% change in ownership because the interest does not transfer to an original transferor. D now holds 33.333% as a tenant in common, and 33.333% in a joint tenancy with B. B remains an original transferor in the joint tenancy.

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(A) a transfer terminating the joint tenancy and creating separate ownerships of the property in equal interests.

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(C) a transfer terminating a joint tenancy and creating or transferring to a legal entity when the interests of the transferors and transferees remain the same after the transfer. (Such transferees shall be considered to be the "original co-owners" for purposes of determining whether a change in ownership occurs upon the subsequent transfer of the ownership interests in the property.)

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(6) The transfer is of a joint tenancy interest of less than five percent of the value of the total property and has a value of less than \$10,000; provided, however, that transfers of such interests during any one assessment year (the period from January 1 through December 31) shall be accumulated for the purpose of determining the percentage interest and value transferred. When the value of the accumulated interests transferred during any assessment year equals or exceeds five percent of the value of the total property or \$10,000, then only that percentage of the property represented by the transferred accumulated interests shall be reappraised. For purposes of this subsection, the "accumulated interests transferred" shall not include any transfer of an interest that is otherwise excluded from change in ownership.

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(d) For purposes of this section, the assessor may consider persons holding joint title to property, such as tenants in common, to be joint tenants ~~and "original transferors"~~ if there is "reasonable cause" to believe that the parties intended to create a joint tenancy ~~and~~

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~~each person was a transferor among the persons holding title.~~ "Reasonable cause" means a deed, Affidavit of Death of Joint Tenant, ~~a trust~~, will, or estate plan ~~indicating that a joint tenant was a transferor among the joint tenants~~, unless circumstances causing the application of the step transaction exist.

Example 14: A and B jointly purchase their primary residence and title is recorded as tenants in common. The sales contract states that A and B intended to take title as joint tenants. ~~Subsequently, A and B each execute revocable living trusts transferring their respective interests in the property to their trusts for the benefit of each other.~~ The assessor may determine that the sales contract ~~and trust instruments~~ establishes that A and B intended to hold title as joint tenants upon purchase ~~and that each subsequently became an "original transferor."~~

EXHIBIT 5

s 462.040. Change in Ownership -Joint Tenancies.

(a) General Rule. The creation, transfer, or termination of a joint tenancy interest is a change in ownership of the interest transferred.

Example 1: The purchase of property by A and B, as joint tenants, is a change in ownership of the entire property.

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Example 3: The subsequent transfer from C and D, as joint tenants, to C, as sole owner, is a change in ownership of 50% of the property.

(b) Exceptions. The following transfers do not constitute a change in ownership:

(1) The transfer creates or transfers any joint tenancy interest, ~~including an interest in a trust~~, and after such creation or transfer, the transferor(s) is one of the joint tenants. Such a transferor(s) is also a transferee(s) and is, therefore, considered to be an "original transferor(s)" for purposes of determining the property to be reappraised upon subsequent transfers. If a spouse of an original transferor acquires an interest in the joint tenancy property ~~either~~ during the period that the original transferor holds an interest ~~or by means of a transfer from the original transferor~~, such spouse shall also be considered to be an original transferor. ~~Any joint tenant may also become an original transferor by transferring his or her joint tenancy interest to the other joint tenant(s) through his or her trust if the trust instrument names the other joint tenant(s) as the present beneficiary or beneficiaries.~~ All other initial and subsequent joint tenants are considered to be "other than original transferors."

Example 4: A and B own property as tenants in common and transfer the property to A and B as joint tenants. A and B are ~~both~~ not "original transferors." **To become original transferors, the transfer must be from A and B to A and B and at least one other person.**

~~Example 4(a): A and B purchase property as joint tenants. Later A and B transfer their property interests to each other as joint tenants through their respective trusts. A and B are transferors who are among the joint tenants and are, therefore, considered to be "original transferors."~~

Example 4(a): A and B purchase property as joint tenants. A transfers his interest to his trust. No change in ownership, since A's trust is revocable, and for his benefit. However, A's trust and B are now tenants in common unless there is a court order specifying otherwise.

Example 4(b): A and B own property as tenants in common, and A has a 20% interest and B has a 80% interest. A and B transfer to A, B, and C as joint tenants. 30% change in ownership, and both A and B become "original transferors." A and B equally share the

EXHIBIT 5

original transferor status. Therefore, since their interests were unequal before the transfer, there is a change in ownership as to the percentage needed to equalize the interests (for A's original transferor interest to equal B's original transferor interest, there is a 30% change in ownership).

Example 5: A and B, as joint tenants, transfer to A, B, C, and D as joint tenants. No change in ownership because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." (C and D are "other than original transferors.") Likewise, if A, as the sole owner, had transferred to A, B, C, and D as joint tenants, no change in ownership. A would be an "original transferor" and B, C, and D would be "other than original transferors".

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Example 7-1: A, B, and C are joint tenants and A is an "original transferor". A dies, and there is a 100% change in ownership. B and C transfer to B, C, and D as joint tenants. D is A's husband. D does not become an original transferor because he did not acquire his interest during the period that A held an interest in the joint tenancy. However, both B and C become "original transferors," since they are transferors who are among the transferees.

Example 7-2: A and B, as joint tenants, transfer to B and C, as joint tenants, and C is A's spouse. ~~C is an original transferor because he was the spouse of an original transferor and he acquired an interest by means of a transfer from A. B does not become an original transferor.~~ A is the original transferor, and B is other than an original transferor. C does not become an original transferor, since A is a transferor, but not a transferee among the joint tenants. 50% change in ownership, as the interest transferred from A to C is excluded from reassessment by the interspousal exclusion, but the interest that B has did not return to an original transferor, and therefore is reassessable.

Example 7-3: A and B are joint tenants and A is an "original transferor". C is A's spouse. A and B as joint tenants transfer to A, B, and C. Both A and C are original transferors, and B remains an other than original transferor.

Example 8: A and B, as joint tenants, transfer to B, C and D, as joint tenants. 66 2/3%

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change in ownership of the transferred interests because A is not one of the transferees.

Example 9: ~~A and B purchase property as joint tenants and transfer their joint tenancy interests to each other through their respective trusts. A and B become "original transferors". A and B sell a 50% interest to C and D, with the deed showing A, B, C and D as joint tenants. C and D then transfer their joint tenancy interests to each other through their trusts, so that both become "original transferors". A and B then sell their remaining 50% to C and D, and go off title. A, B, C, and D transfer to A, B, C, D, and E as joint tenants. A and B remain original transferors, and C, D, and E are other than original transferors. A, B, and E then transfer to C and D. 100% change in ownership, since both original transferors come off title. Under circumstances where application of the step-transaction doctrine to disregard the form of the transaction would be appropriate due to their intent to avoid a change in ownership, A, B, C and D do not become "original transferors" as the result of their transfers to each other.~~

(2) The transfer terminates an original transferor's interest in a joint tenancy described in (b)(1) and the interest vests in whole or in part in the remaining original transferors; except that, upon the termination of the interest of the last surviving original transferor, there shall be a reappraisal of the property as if it had undergone a 100 percent change in ownership.

Example 10: A and B transfer to A, B, C, and D as joint tenants. A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an original transferor, remains as a joint tenant. ~~However, if A grants his interest to B, or to B, C, and D as joint tenants, under circumstances where application of the step-transaction doctrine to disregard the form of the transaction would be appropriate due to the intent to avoid a change in ownership, there would be a 50% change in ownership (A's original interest was 50%).~~

Example 11: Following the example set forth in Example 10 (above), B dies or grants his interest to C and D. 100 percent change in ownership because both A's and B's interests had previously been excluded from reappraisal and B was the last surviving original transferor.

(3) The transfer terminates a joint tenancy interest held by other than an original transferor in a joint tenancy described in (b)(1) and the interest is transferred either to an original transferor, or to all the remaining joint tenants, provided that one of the remaining joint tenants is an original transferor. The original transferor status of any remaining joint tenants ceases when a joint tenancy is terminated.

Example 12: Following the example set forth in Example 10 (above), C, not an original transferor, grants his interest to B and D. No change in ownership because C grants to the remaining joint tenants, B and D, and B is an original transferor.

~~Example 13: A owns real property and transfers a 50% interest to B as a tenant in common resulting in a change in ownership of that 50% interest. They subsequently~~

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~~transfer to themselves in joint tenancy and, as a result, become "original transferors". A dies and A's joint tenancy interest passes to B by operation of law without a change in ownership because B is an "original transferor." Upon A's death, the joint tenancy is terminated and B ceases to be an "original transferor."~~

Example 13: Following the example set forth in Example 10 (above), C, not an original transferor, grants his interest to D. 33.333% change in ownership because the interest does not transfer to an original transferor. D now holds 33.333% as a tenant in common, and 33.333% in a joint tenancy with B. B remains an original transferor in the joint tenancy.

(4) For other than joint tenancies described in (b)(1), the transfer is between or among co-owners and results in a change in the method of holding title but does not result in a change in the proportional interests of the co-owners, such as:

(A) a transfer terminating the joint tenancy and creating separate ownerships of the property in equal interests.

(B) a transfer terminating the joint tenancy and creating a tenancy in common of equal interests.

(C) a transfer terminating a joint tenancy and creating or transferring to a legal entity when the interests of the transferors and transferees remain the same after the transfer. (Such transferees shall be considered to be the "original co-owners" for purposes of determining whether a change in ownership occurs upon the subsequent transfer of the ownership interests in the property.)

(5) The transfer is one to which the interspousal exclusion applies.

(6) The transfer is of a joint tenancy interest of less than five percent of the value of the total property and has a value of less than \$10,000; provided, however, that transfers of such interests during any one assessment year (the period from January 1 through December 31) shall be accumulated for the purpose of determining the percentage interest and value transferred. When the value of the accumulated interests transferred during any assessment year equals or exceeds five percent of the value of the total property or \$10,000, then only that percentage of the property represented by the transferred accumulated interests shall be reappraised. For purposes of this subsection, the "accumulated interests transferred" shall not include any transfer of an interest that is otherwise excluded from change in ownership.

(7) The transfer is one to which the parent-child or grandparent-grandchild exclusion applies, and for which a timely claim has been filed as required by law.

(c) For purposes of this section, for joint tenancies created on or before March 1, 1975, it shall be rebuttably presumed that each joint tenant holding an interest in property as of March 1, 1975, is an "original transferor." This presumption is not applicable to joint

EXHIBIT 5

tenancies created after March 1, 1975.

(d) For purposes of this section, the assessor may consider persons holding joint title to property, such as tenants in common, to be joint tenants ~~and "original transferors"~~ if there is "reasonable cause" to believe that the parties intended to create a joint tenancy ~~and each person was a transferor among the persons holding title.~~ "Reasonable cause" means a deed, Affidavit of Death of Joint Tenant, ~~a trust,~~ will, or estate plan ~~indicating that a joint tenant was a transferor among the joint tenants,~~ unless circumstances causing the application of the step transaction exist.

Example 14: A and B jointly purchase their primary residence and title is recorded as tenants in common. The sales contract states that A and B intended to take title as joint tenants. ~~Subsequently, A and B each execute revocable living trusts transferring their respective interests in the property to their trusts for the benefit of each other.~~ The assessor may determine that the sales contract ~~and trust instruments~~ establishes that A and B intended to hold title as joint tenants upon purchase ~~and that each subsequently became an "original transferor."~~

EXHIBIT A

EXAMPLES OF UNINTENDED USAGE	ADMINISTRATIVE ISSUES	REVENUE IMPLICATIONS	POTENTIAL LITIGATION
<p>1. Aunt Harriet owns a shopping center and an industrial building. She deeds the shopping center to herself and her niece, Lottie, as joint tenants, and deeds the industrial building to herself and her nephew, Larry, as joint tenants. Aunt Harriet is an original transferor (OT), and Lottie and Larry are other than original transferors (OTOT). Lottie and Larry each then transfer their interests to their revocable trusts for the benefit of Aunt Harriet; Lottie and Larry become OTs. Aunt Harriet transfers her interests in each to Lottie and Larry. There is no change in ownership because Lottie and Larry had become OTs. Subsequently, Lottie and Larry amend their trusts to name new beneficiaries upon their death.</p> <p>2. Jim's mother gifts him an apartment complex in 1998 that she has owned since 1965, and they properly apply and are granted a parent/child exclusion. In 2002, Jim's friend,</p>	<ul style="list-style-type: none"> • Training – Learning to recognize and apply the new rule takes extensive training. If the training is not done, then the cost is in errors on assessments, and unequal treatment. • Public and attorney contact – Both the public and attorneys ask many questions about 1) what they can potentially do and how to go about it, 2) why we did what we did, and how it can be changed, or explaining why they don't think they need to supply the Assessor's Office with document copies, 3) how can they reverse a reassessment when they didn't respond to requests for information. These take many hours of time. • Asking for information – Whether asking by letter or telephone, requesting information and following up to find out if it has been received, takes a lot of time. If the information has been sent in, it 	<ul style="list-style-type: none"> • One county has already had to request an additional Transfer position based on the increase in workload directly attributable at least in part to the new rule. With salary and benefits, this is a cost of between \$35,000 and \$40,000. • Additional training time and public contact would average approximately three weeks a year per transfer and public contact person. At the low end of the pay scale, this is approximately \$2,500 per person. If an appeal is involved, where an appraiser and other staff are involved, the costs would easily quadruple. • In Example 1, say that Aunt Harriet's base assessment value is \$500,000 for the shopping center and \$450,000 for the industrial building. When Aunt Harriet deeds the shopping center to Lottie, the market value is \$5,000,000. When Aunt Harriet deeds the industrial building to Larry, the 	<ul style="list-style-type: none"> • Title companies do not recognize trusts as legitimate joint tenants. Three title companies were consulted in two different counties. None of the senior title officers consulted were aware deeds were recording with trusts being named as a joint tenant. (They certainly would not recognize a second transfer by one joint tenant to a trust as maintaining a joint tenancy.) All three said they would not insure title held in this manner. There is too much likelihood of litigation. • Change in ownership laws encourage trusts to be joint tenants (by allowing them an exclusion), but title companies do not want to insure title in these situations (or do not recognize that a joint tenancy exists). What document should be recorded when a trust "dies?" Should it be an Affidavit-Death of Joint Tenant (with the trust's death certificate attached), or an Affidavit – Death of Trustor (and/or

EXHIBIT A

<p>Bob, decides to invest in the business, and Jim adds Bob to title as a joint tenant (to avoid reassessment). They create an agreement between themselves identifying their actual ownership and vesting, and plans should something happen to one of them. In 2004, Bob creates a trust that names Jim as “present beneficiary.” The trust is submitted to the Assessor’s Office, and their records now reflect Bob as an original transferor. Bob then amends his trust to name his actual beneficiaries, his brother and sister. Both Bob and Jim are now original transferors. In 2012, Bob dies. Both Jim and Bob’s brother and sister claim Bob’s interest.</p> <p>3. Jeff and Mary are friends who decide to buy a house together in 2001. They take title as joint tenants. In 2004, they transfer into trusts which name each other as “present beneficiaries.” Both of them become original transferors. In 2005, Jeff and Mary have a falling out, and each of them amends their trust to name someone else as beneficiary upon their death. In</p>	<p>must be reviewed, and most trust documents are about 30 pages or more in length. Many are quite complex.</p> <ul style="list-style-type: none"> • If a property is reassessed because information was never supplied, often people ask for reviews and corrections. Again, a lengthy document must be reviewed, but also corrections written if an exclusion is allowed. Costs multiply, as an appraiser has spent time valuing the property, corrections must be written, calculations for the value reversal must be made, and corrections entered into the system. Both the Auditor and the Tax Collector are involved in the process for any corrections, and there are costs for their time. In addition, all three offices usually receive follow-up calls from the assessee and/or attorney asking why the process is taking so long, and do they need to pay their taxes, etc. • If an exclusion is not allowed, then often there is an appeal filed. Appeals can take up many hours (days) of staff time to properly defend a position, 	<p>market value is \$2,000,000. The revenue loss <i>per year</i> is a minimum of \$60,500 per year (if the tax rate is 1%, which is extremely unlikely in an area with commercial activity). If the tax rate is 1.5%, the loss is over \$90,000 <i>per year</i>.</p> <ul style="list-style-type: none"> • One county estimates that since 2003, 1350 transfers have been coded related to the rule changes. Based on their average home value (this does not include any commercial property figures), they estimate the future loss of tax revenue could be as high as \$5.5 million. Additional transfers continue to be coded every day, which will result in even higher revenue losses. • One large county reported they found over 200 transfers (related to the 2003 rule change) for 2005 and a portion of 2006. They took the base year value, and estimated the sales price, and calculated the difference to determine estimated potential loss in revenue. The figure for approximately 17 months of transfers was over \$43,000,000 	<p>Trustee) which would imply there is no joint tenancy? Or both? Or should there be legislation passed to create some new document?</p> <ul style="list-style-type: none"> • In Example 2, Jim was the joint tenant, but Bob had amended his trust (without any recorded document – many counties would not allow a document to record to note a trust amendment even if the trustor/trustee wanted to) to name his brother and sister. According to the State, this is a “secret severance,” and this should mean that Jim would get the property. However, since the trust is a recognized estate planning tool, would a court refuse to accept Jim naming his brother and sister as beneficiaries? There will be many trusts that are amended “secretly,” and by encouraging this dichotomy of vestings (trusts and joint tenancy), litigation is being encouraged as well. Attorneys are undoubtedly overjoyed with this new rule – business will be booming. • When litigation in Example 2 is finally resolved by the court, the
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EXHIBIT A

<p>2008, Mary buys out Jeff's interest. No reassessment, since the Assessor's Office is never notified of the amendments.</p>	<p>and if the appeal is lost, the revenue is lost as well.</p> <ul style="list-style-type: none">One of the reasons people use trusts for estate planning is the privacy and ease with which amendments can be made. If an amendment is made public (i.e. recorded), even if just a mention is made that a trust has been amended, the joint tenancy could be severed. In Example 2, if Bob originally names Jim as "present beneficiary," but in an amendment names his brother and sister as "present beneficiaries," the joint tenancy is severed (if there is a document recorded that mentions the amendment). While this may not immediately cause a reassessment, it could mean one at a future date. Therefore, tracking possible mention of a trust amendment could result in extensive amounts of time. NOTE: Not all County Recorder offices accept documents that would help identify changes within a trust.	<p>in assessed value.</p> <ul style="list-style-type: none">One county created a method for calculating the amount of revenue increase for the 2005 year that was attributable to changes in ownership. For 2005, they calculated \$651,374 tax dollars (as opposed to assessed value) was directly due to changes in ownership. The assessor feels that with the new rule, this entire increase amount could be at risk in the future as people become aware of the possible exclusion potential.Most counties have not kept statistics, but one medium-size county determined that between 2004 and 2005, there was a 307% increase in recordings involving trusts and joint tenancies. Although all the figures have not been counted, so far there is at least a 40% increase for the first three months of 2005 as compared to the first three months of 2006. 35% of the transfers can not be processed because the counties have not yet been given direction on how to interpret certain transfers.	<p>chances are at least 50/50 that assessments will need to be revised as a result. If a court decides the joint tenancy was severed in 2004 when Bob deeded to his trust, and the final order is signed in 2014, there are six years of escaped assessment that cannot be recovered, as they would be past the statute of limitations. The individuals will be responsible for eight years of escaped assessments.</p> <ul style="list-style-type: none">Pending litigation would freeze any further action on the property, possibly for years, meaning that even if one of the parties wanted to sell the property, they couldn't. Also, if an asset is frozen, and that is essentially the only asset of the taxpayer, it is quite possible that no taxes would be paid during the litigation period, and the property could not be sold for taxes by the county during this period. This needless litigation is a burden to the taxpayer, the court system, and the county.Litigation is expensive for the parties involved, as attorney fees will be required in almost
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EXHIBIT A

		<p>Taken state-wide, these numbers show what we have seen so far is only the tip of the iceberg, as numbers will continue to grow as more people discover the exclusion potential.</p> <ul style="list-style-type: none">• Most counties have been working all their transfers, despite not knowing how to interpret the transfer. Some counties, including large counties, are saying they are seeing no impact from the new rule. This indicates there are widespread problems in equalization. While the revenue cost cannot be calculated, or even estimated, the costs may be much higher than just tax revenue (consider court costs, administrative costs, erosion of equal handling of transfers and exclusions, etc.)	<p>every situation. If someone is on title to a property in good faith, and is named in an action, it can cause immense hardship on that person, and may result in loss of ownership to the property because the costs of defending the title are too great.</p>
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EXHIBIT B

EXAMPLES OF UNINTENDED USAGE	ADMINISTRATIVE ISSUES	REVENUE IMPLICATIONS	POTENTIAL LITIGATION
<p>1. Ruth owned a 7 unit apartment building in trust, with a 1987 base. Ruth died in 1995, and left the trust assets to her three sons, John, Robert, and Thomas. The parent/child exclusion was filed and accepted. Four documents are executed on October 14, 2003. On November 3, 2003, the first document, an Affidavit – Death of Trustee, records naming John as the Successor Trustee. On November 7 the second document records, vesting title to the three sons as tenants in common. On November 14 the third document records changing the vesting from tenants in common to joint tenants. On November 19 the fourth document records giving John and Thomas’s interests to Robert. (This is a real life example.)</p> <p>2. Jack owns a large commercial building in a downtown area with a 1980 base. Jack adds Ralph to title in 2004 for a .1%</p>	<ul style="list-style-type: none"> • Training – Learning to recognize and apply the new rule takes training. Discussing and understanding the possible application of the step-transaction doctrine also takes training, and is very difficult to find and/or correctly apply. This is another area where it is easy to make errors, and which can easily result in unequal treatment. • If a step-transaction is identified (Example 1 is a real life example), then it often results in appeal. Preparing for an appeal, particularly one with legal issues like a step-transaction, can involve several staff members, including county counsel in some cases, and can require many hours (and/or days) of time for preparation as well as the actual presentation. Were it to proceed to court, even more time would be required. 	<ul style="list-style-type: none"> • In Example 1 (the real life example), the county had \$262,450 on the roll before the transfers. For the 66.666% appraisal they did, the value increased to \$554,286 for the supplemental. This is a loss of \$291,836 in assessed value for that year, plus each year thereafter. This takes into account only the amount of actual value lost on the property roll. It does not include the additional administrative cost of the actual appeal, etc. • Examples 2 and 3 are theoretical at this time. However, they may well have happened, and the county has kept no record for this statistical purpose. For actual revenue loss, any numbers could be used. So, for Example 2, say that Jack’s 1980 base value was \$720,000. The market value of the property is now \$4,000,000. This would mean an annual tax loss of approximately \$40,000 to 	<ul style="list-style-type: none"> • Litigation would most likely occur as the result of a lost appeal (and either side might take the matter to court). If the numbers had been larger in Example 1, the county might very well have chosen to take the case further. According to the county, “the appeals board was compelled by the applicant’s argument that there is “...no support or citation...” to the position that the legislative intent of Property Tax Rule 462.040 is for estate planning purposes, and is not designed to be used as a tool to circumvent a reassessment for change in ownership; the applicant used the Rule’s Example 10 as an indication of such. The board agreed and found this series of transfers to be excluded under 462.040.

EXHIBIT B

<p>interest, which qualifies for the <i>de minimus</i> exclusion. Ten months later, Jack and Ralph deed to themselves as joint tenants (no change in ownership, and both become original transferors). A year later, Jack deeds to Ralph. (Jack and Ralph have a side agreement in case something happens to one of them during the period they owned the property together. By agreeing to stretch the transfers out, Jack receives an additional \$50,000 in cash.)</p>		<p>\$60,000 (depending on the tax rate). For Example 3, say the base value of each property was \$400,000, and the full market value of each was \$600,000 (a fairly conservative increase in today's market). This would be a loss of about \$2,000,000 in assessed value for all 10 properties, and a loss of about \$25,000 to \$35,000 in annual taxes.</p>	
<p>3. Steve owns many properties, and has been gifting and/or transferring them to his two children over the last six years to minimize his estate income tax. He has filed parent/child exclusions, and they have been accepted. Knowing that he had only \$20,000 of his \$1,000,000 full cash value left, he transferred small interests equaling \$10,000 in 5 of his remaining rental properties to his one child, and the same amount in another 5 properties to his other child. (So each</p>			

EXHIBIT B

<p>child might get a 1% interest in each property.) Then, they recorded deeds transferring from Steve and each child to themselves as joint tenants on each of the 10 rental properties. There is no change in ownership, and Steve and the vested child each become original transferors. Steve deeds the remaining interest to each child. There is no reassessment, and no parent/child exclusion claim is required, so Steve's children receive the benefit of an additional \$2,000,000 (possibly more) in full cash value above the \$1,000,000 they received under the parent/child exclusion.</p>			
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